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No. (D)

In The
Supreme Court of the United States

TRANSPORTADORA EGOBA, S.A. de C.V.,

Petitioner,

v.

JOSE ANTONIO ARREDONDO, Individually and as Personal Representative of the Estate of Miriam Arredondo, Deceased, and as Personal Representative of the Estate of Jose Arredondo, Deceased, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Texas, Fourth District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are:

Is it consistent with traditional notions of fair play and substantial justice for a Texas court to ignore the effects of its assertion of jurisdiction on the interests of a foreign defendant's nation as well as on the United States government's interest in its foreign relations policies, despite this Court's mandate to lower courts in *Asahi* to consider those interests and to exercise "great care and reserve" when exercising personal jurisdiction over foreign defendants?

Does due process allow American courts to adjudicate claims against Mexican trucking companies arising from truck accidents that occurred in Mexico despite federal law prohibiting the same trucks from using United States roads outside the commercial border zone?

In the NAFTA era of expanded commerce between Mexico and the United States, may American courts, consistent with due process, hale Mexican defendants into the United States under general jurisdiction principles to adjudicate tort claims arising out of accidents that occurred in Mexico, notwithstanding the probable reciprocal comity consequence of allowing Mexican courts to exercise jurisdiction over Americans with Mexican contacts to adjudicate tort claims arising from events occurring entirely within the United States?

QUESTIONS PRESENTED – Continued

Does a Texas court's exercise of long-arm jurisdiction over Egoba in this case offend the traditional notions of fair play and substantial justice embodied in the Due Process Clause of the Fourteenth Amendment?

PARTIES TO THE PROCEEDING

Petitioner is Transportadora Egoba, S.A. de C.V. ("Egoba"), a Mexican trucking corporation based in the Mexican state of Queretaro, where it has its principal place of business.

Plaintiffs-appellees below, who are respondents under Rule 12.6, are Jose Antonio Arredondo, Individually and As Personal Representative of the Estate of Miriam Arredondo, Deceased, and As Personal Representative of the Estate of Jose Arredondo, Deceased, Edna Arredondo, Martha Arredondo, Individually and As Independent Administrator of the Estate of Juan Arredondo, Deceased, and As Independent Administrator of the Estate of Juana Arredondo, Deceased, and As Personal Representative of the Estate of Selena Arredondo, Deceased, and As Next Friend of Ana Lidia Arredondo, Incompetent, Yesenia Arredondo, Georgina Arredondo, Delia Arredondo, and Albino Mena.

RULE 29.6 DISCLOSURE

Egoba has no parent corporation and no publicly-held company owns any interest in Egoba.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Transportadora Egoba, S.A. de C.V. ("Egoba") respectfully petitions for a writ of certiorari to review the judgment of the Texas Fourth Court of Appeals.

OPINIONS BELOW

The order of the district court denying petitioner's special appearance challenging personal jurisdiction (App. 14-15) is unreported. The opinion of the court of appeals affirming the district court's order (App. 1-11) is reported at 217 S.W.3d 603, and the associated judgment (App. 12-13) is unreported.

JURISDICTION

The court of appeals rendered judgment on October 25, 2006. App. 13. Petitioner filed a timely petition for review with the Supreme Court of Texas, which was denied on June 1, 2007. App. 16. Petitioner filed a timely motion for rehearing, which was denied on July 20, 2007. App. 17. This court has jurisdiction under 28 U.S.C. section 1257(a). *See Calder v. Jones*, 465 U.S. 783, 788 n. 8 (1984) (holding that an interlocutory state court judgment is final under section 1257 if, on the relevant federal issue, the judgment is final and not subject to further state court review).

CONSTITUTIONAL AND TREATY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in relevant part that "[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law."

Pertinent provisions of the North American Free Trade Agreement are reprinted at App. 18.

INTRODUCTION

Twenty years ago, recognizing the expansion of international commerce, this Court clarified the due process analysis applicable to the adjudication of personal jurisdiction as to foreign defendants in specific jurisdiction cases. *Asahi Metal Indus. Co. v. Superior Court of California, Solano County*, 480 U.S. 102, 113-15 (1987). The Court required courts to consider, *inter alia*, the United States government's interest in its foreign-relations policies and the policies of the foreign defendants' countries. *Asahi*, 480 U.S. at 113-15.

This Court has not had occasion to explain the reasonableness inquiry in a general jurisdiction case against a foreign defendant whose contacts are unrelated to the litigation. *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 573 (2nd Cir. 1996); Charles W. "Rocky" Rhodes, *Clarifying General*

Jurisdiction, 34 SETON HALL L. REV. 807, 899 n. 447 (2004) ("But the Supreme Court did not specifically resolve whether these factors also apply to assertions of general jurisdiction . . . "). Although American courts generally list the *Asahi* factors in general jurisdiction cases, they have applied varying doctrinal approaches. Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. at 829-55.

This case allows the Court to clarify the relationship between the due process mandates in *Asahi* and the general jurisdiction analysis in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413-14 (1984). This is a pure general jurisdiction case, as Respondents have conceded. App. 5. This also is another opportunity to correct Texas' overly expansive general jurisdiction jurisprudence. *See, e.g.*, *Helicopteros*, 466 U.S. at 413-14.

Despite exponential increases in communications, the proliferation of internet transactions, and NAFTA's fostering of growing international contacts and commerce, the Texas courts here and other courts have failed to follow this Court's *Asahi* mandate, even when reciting it. In contrast, several Circuits have analyzed the potential impacts of cases involving extraterritorial judicial jurisdiction on the interests of other nations and American foreign policy interests and, based on those analyses, have declined to exercise jurisdiction over foreign defendants.

One of the most litigated issues in state and federal courts is the courts' jurisdiction over non-resident

defendants. Russell J. Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. DAVIS L. REV. 531 (1994-95). The jurisdictional issues here are likely to recur because of the hundreds of billions of dollars in annual trade between Mexico and the United States and the extensive contacts between Mexicans and Americans, including those along the 2,000 mile border. This case also presents a recurring circumstance that is particularly inconsistent with fair play and substantial justice, because federal law bars Mexican trucks – like the Egoba truck involved in this accident – from using United States roads outside the border zone. Forcing Mexican businesses either to (1) decide not to do business with Americans at all or (2) risk being haled into United States courts to answer claims arising out of accidents or other disputes arising entirely in Mexico is contrary to the accomplishment of U.S. foreign policy goals, including those expressly stated in NAFTA. Likewise, the assertion of expansive general jurisdiction by United States courts should not encourage countries with whom American individuals and companies do business to exercise judicial jurisdiction over Americans in disputes arising out of accidents or other disputes occurring entirely within the United States.

In other contexts, this Court has reaffirmed traditional jurisdictional principles based on territoriality, as opposed to more expansive views of jurisdiction. *See, e.g., F. Hoffman-La Roche, Ltd. v. Empagran, S.A.*, 542 U.S. 155, 164-69 (2004); *Sosa v. Alvarez-Machain*, 542 U.S. 692, 712, 727-28 (2004).

This case presents the question whether general jurisdiction should be more expansive in civil tort cases against foreign entities when those cases arise entirely outside the United States. *Compare with American Dredging Co. v. Miller*, 510 U.S. 443, 462 (1994) ("And to the extent that the mere assertion of state judicial power may threaten maritime commerce, the Due Process Clause provides an important measure of protection for out-of-state defendants, especially foreigners.") Egoba submits that a proper *Asahi* analysis would have compelled dismissal of this case because the assertion of general jurisdiction over Egoba violates due process.

STATEMENT OF THE CASE

A. Factual background

1. NAFTA and the foreign policy context and implications.

The accident that gave rise to this suit, described further below, occurred in Mexico about 200 miles south of Nuevo Laredo, Mexico, when a Mexican truck that transported goods solely in Mexico and that is owned by Egoba, a Mexican trucking company, crested a hill on a Mexican highway and collided with a stopped car occupied by six members of the Arredondo family. The *Asahi* factors most pertinent to a due process analysis here derive from the North American Free Trade Agreement ("NAFTA") and related policies and issues.

Mexico, Canada, and the United States signed the agreement in December 1992, and it became effective on January 1, 1994. *Dep't of Transportation v. Public Citizen*, 541 U.S. 752, 759 (2004); 32 I.L.M. 605 (1993). Among other objectives, the NAFTA signatories sought to:

> (a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
>
> (b) promote conditions of fair competition in the free trade area; [and]
>
> (c) increase substantially investment opportunities in the territories of the Parties. . . .

NAFTA Article 102(1)(a-c), 32 I.L.M. 289, 297 (1993).

The signatories' policy choice, as expressed in NAFTA, is to promote greater economic exchange and growth through increased investment, trade, and interaction between the member countries. NAFTA sought to eliminate – not increase – tariffs and other barriers to trade. NAFTA Article 102(1)(a), 32 I.L.M. at 297. By promoting increased trade, the NAFTA countries hoped that millions of residents of each country would benefit from improved economic conditions. Mexico is the United States' second largest trading partner, receiving almost $134 billion in U.S. exports and sending more than $198 billion in goods to the U.S. in 2006. *See* U.S. Census Bureau Foreign Trade Statistics http://www.census.gov/foreign-trade/

balance/c2010.html#2007. Mexico's economy is highly dependent on trade with the United States, and the State Department has described the United States' relations with Mexico as being "as important and complex as with any country in the world." *See* U.S. Department of State Bureau of Western Hemisphere Affairs Background Note: Mexico at http://www.state.gov/r/pa/ei/bgn/35749.htm, page 7 of 12. Approximately 20% of the Mexican population are employed in export-related jobs.[1] Moreover,

> The scope of U.S.-Mexican relations goes far beyond diplomatic and official contacts; it entails extensive commercial, cultural, and educational ties, as demonstrated by the annual figure of nearly a million legal border crossings a day. In addition, more than a half-million American citizens live in Mexico. More than 2,600 U.S. companies have operations there, and the U.S. accounts for 55% of all foreign direct investment in Mexico.

See U.S. Department of State Bureau of Western Hemisphere Affairs Background Note: Mexico at http://www.state.gov/r/pa/ei/bgn/35749.htm, page 7 of 12.

The increasing interaction between the countries could have significant ramifications for American

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[1] Christopher Stoltz, *NAFTA, The United States, Texas and Mexico: Problems Facing Commercial Vehicles at the Border and What is Being Done to Ensure Safety on the Roadways*, 6 TEX. TECH. J. TEX. ADMIN. L. 165, 167 (2005).

courts. As one commentator has noted, with 12 million Americans traveling to Mexico each year, if one in every 10,000 is involved in an accident, 1,200 tort claims may be made in U.S. courts. Michael Wallace Gordon, *Book Review on Mexican Law: A Treatise for Legal Practitioners and International Investors,* 32 U. MIAMI-INTER. AM. L. REV. 361, 364 (2001). Given the number of interactions involving Americans in Mexico and Mexican companies with some contacts in the border commercial zones, the number of lawsuits filed in the United States arising out of events occurring entirely in Mexico is highly likely to continue to increase and consume more of U.S. courts' time. *See, e.g., Felch v. Transportes Lar-Mex, S.A. de C.V.*, 92 F.3d 320, 321-22, 327-29 (5th Cir. 1996) (reversing exercise of jurisdiction over Mexican trucking company for claims arising out of an accident that occurred entirely in Mexico)[2]; *Spinozzi v. ITT Sheraton,* 174 F.3d 842, 844 (7th Cir. 1999); *Curley v. AMR Corp.*, 153 F.3d 5, 13 (2nd Cir. 1998); *Hernandez v. Burger*, 102 Cal. App. 3d 795, 802, 162 Cal. Rptr. 564, 568 (Cal. App. – 4th Dist. 1980).

NAFTA Chapter 20 provides that the Free Trade Commission will handle dispute resolution between

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[2] *See also, Transportation Especial Autorizada v. Seguros Comercial America,* 978 S.W.2d 716, 722 (Tex. App. – Austin 1998, no pet.); *Juarez v. United Parcel Serv. de Mexico,* 933 S.W.2d 281 (Tex. Civ. App. – Corpus Christi 1996, no writ); *Summit Machine Tool Mfg. Corp. v. Warren Transport, Inc.*, 920 F. Supp. 722 (S.D. Tex. 1996); and *Arkwright Mutual Ins. Co. v. Transportes de Nuevo Laredo,* 879 F. Supp. 699 (S.D. Tex. 1994).

the three countries. 32 I.L.M. 605, 693-98 (1993). However, NAFTA created no tribunal for or otherwise made provisions for resolution of private disputes between citizens of the member nations, which may arise anywhere within the territory from the Yukon to the Yucatán. As a result, the private disputes arising from the millions of daily interactions between Mexicans and Americans have been adjudicated based on each country's own legal systems, traditional principles of international law, and other treaties.

The legal standards applicable to cross-border trucking between Mexico and the United States have created troublesome and divisive political issues for years.[3] In November of 2002, President Bush modified the ban on Mexican trucks to allow cross-border trucking services only in border commercial zones. Exec. Mem., 67 Fed. Reg. 71,795 (Nov. 27, 2002). When the accident at issue in this case occurred, and even now with few exceptions,[4] Mexican long-haul

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[3] *See generally*, Elizabeth Townsend, *NAFTA, Mexican Trucks, and the Border: Making Sense of Years of International Arbitration, Domestic Debates, and the Recent U.S. Supreme Court Decision*, 31 TRANSP. L.J. 131, 146-49, 153-60 (2003-04).

[4] The U.S. Department of Transportation announced in February of 2007 a "pilot program" to allow trucks from 100 selected carriers access to U.S. roads while U.S. trucks would be provided access to transport in Mexico. http://www.dot.gov/affairs/cbtsip/dot2107.htm. Transportation Secretary Mary Peters indicated that the project would make safety its first priority and eliminate the costly, cumbersome, and outdated system of moving freight into the U.S. from Mexico. In September of 2007, the first American truck went into Mexico to

(Continued on following page)

trucks – like the Egoba truck involved in the accident that gave rise to this suit – remain legally barred from operating in the United States outside the border commercial zones.[5] In 2006, more than four million crossings were made into the zones. http://www.dot.gov/affairs/fmcsa0607.htm. As early as 1999, 8,400 Mexican firms were authorized to operate in the zones. Townsend, *NAFTA, Mexican Trucks, and the Border*, 31 TRANSP. L.J. at 149 n. 155. Egoba and other Mexican carriers purchase American insurance for claims that may arise from operations in those zones, but do not regularly purchase American insurance for claims that may arise from their operations in Mexico, which are covered by Mexican insurance. *See Lincoln Gen. Ins. Co. v. Garcia*, No. 05-20938, 2007 WL 2743166, at *3-5 (5th Cir. Sept. 21, 2007). Egoba's position is clear and fair: any trucks operating in the United States must be insured by American insurance and satisfy state and federal regulations

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perform long-haul services. http://www.dot.gov/affairs/fmcsa 0607.htm. *See also* Townsend, *NAFTA, Mexican Trucks, and the Border*, 31 TRANSP. L.J. at 148-49 (discussing the limited exceptions).

[5] A "border commercial zone" lies between a point in Mexico and "points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the United States, any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies)." DX 11. *See also* Stoltz, *NAFTA, The United States, Texas and Mexico*, 6 TEX. TECH. J. TEX. ADMIN. L. at 167 (describing drayage operations in the border zone); Townsend, *NAFTA, Mexican Trucks, and the Border*, 31 TRANSP. L.J. at 148.

and laws in this country, while trucks operating in Mexico must be insured by Mexican insurance and satisfy Mexican state and federal regulations and laws.

Using NAFTA's dispute resolution process, Mexico challenged the United States' implementation of NAFTA's motor carrier provisions. In February 2001, the NAFTA arbitration panel ruled that the United States had breached NAFTA by refusing all Mexican motor carrier applications and banning Mexican long-haul trucks from entering the United States. *Public Citizen*, 541 U.S. at 760. This Court just three years ago ruled that the Federal Motor Carrier Safety Administration had no obligation to evaluate the environmental effects of those cross-border operations of Mexican domiciled carriers. *Id.* at 773. Whether Mexican trucks are allowed into the United States beyond the border zone to conduct business remains a matter of significant public dispute. *See* Townsend, *NAFTA, Mexican Trucks, and the Border*, 31 TRANSP. L.J. at 189 ("As of May 2005, the border remained in its pre-NAFTA state – which [sic] U.S. and Mexican trucks still switching their trailers from one to the other within the commercial zone.").

2. Egoba, its Mexican trucking business, and its relation to Texas.

Egoba is a Mexican trucking company based in Queretaro, Mexico, with five other Mexican offices, including one in Nuevo Laredo, Mexico. RR 44-45.

Egoba has no offices, subsidiaries, or affiliates in the United States. RR 46, 53. It does not hold directors' meetings or solicit employees here. RR 46, 62. Egoba does not market to Texas businesses. RR 63. Although Egoba's passive website can be accessed by users worldwide, the site's interactive tracking function is available only to its Mexican clients. RR 63-64.

Egoba moves freight for Mexican manufacturers from Nuevo Laredo into the interior of Mexico. RR 45. Its "long-haul" trucks never enter the United States, and it transports no cargo between points within the United States. RR 50-52, 65. Federal law forbids it.

Egoba also ferries trailers of goods across the United States-Mexico border, travelling between Nuevo Laredo and Laredo, Texas using "drayage" trucks. RR 52, 75.[6] These smaller drayage trucks travel only within the border zone. RR 76; DX 11. Egoba performs border-crossing services for entities with which it has "interchange agreements." RR 60-62. Egoba negotiates the interchange agreements in Mexico with Mexican subsidiaries of American transportation companies. RR 51, 60-62.

To operate the border-crossing service legally, Egoba (a) registers with the Texas and United States Departments of Transportation; (b) maintains a registered agent; and (c) purchases American insurance

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[6] *See* Stoltz, *NAFTA, The United States, Texas and Mexico*, 6 TEX. TECH. J. TEX. ADMIN. L. at 167 (describing drayage operations).

coverage for drayage truck operation within the American border zone.[7] RR 53-58; DX 8, 9, 11, 14; PX 6, Exhs. 10, 12, 13.

In connection with the drayage operation, Egoba owns and pays taxes on an unimproved lot in Laredo. RR 54, 58-59. Its drayage truck drivers have been ticketed in Texas, RR 77, and Egoba has been sued in Texas three times. PX 6, Exhs. 19, 20, 21. The other suits that Egoba has been involved in, including one it filed in Texas, are all related to operation of the drayage trucks. *Id.* The border-crossing service generates only 1-2% of Egoba's revenue. RR 59-60.

Egoba has purchased fuel in Texas, PX 6, Exh. 1, pp. 48-49, and maintains a bank account in Laredo. RR 62-63. Mr. Pedro Alegria, Egoba's registered agent and one of its directors and shareholders, lives in Laredo and commutes to Nuevo Laredo daily to work. RR 44-46, 74. Mr. Alegria receives Egoba mail at his house. RR 53-54.

3. The accident at issue and some surrounding circumstances.

In September 2004, Jose Antonio Arredondo ("Mr. Arredondo") and five of his family members were traveling in Mexico to visit family when their car was

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[7] 49 U.S.C. § 13902; 49 C.F.R. pts. 366 and 368, §§ 367.4(c) and 387(c); TEX. TRANSP. CODE §§ 643.051, 643.052, 643.101, and 643.103(a). Egoba's American insurance does not cover collisions in Mexico involving Egoba's long-haul trucks. RR 55-57; DX 14.

struck by an Egoba long-haul truck. DX 5. The collision occurred about 200 miles south of Nuevo Laredo, RR 47-48, on a Mexican interstate toll road that runs between Saltillo and Queretaro, Mexico. DX 1, p. 4; DX 5. Traffic on the toll road had come to a stop because of an earlier collision, but Mexican highway patrol officers had failed to close the toll road despite the resulting congestion. DX 5. The Egoba long-haul truck crested a hill and collided with the Arredondo vehicle, which was among others stopped on the toll road. DX 5, pp. 2, 4, 9. The collision killed five occupants of the Arredondo vehicle. DX 5, p. 9. Mr. Arredondo survived and was taken to a Mexican hospital. DX 5.

Everyone in the Arredondo vehicle was a Mexican native residing in the United States. DX 5. Most of the plaintiffs in this case are Mexican citizens. DX 1. Albino Mena is the only plaintiff who does not currently reside in the United States; he lives in Mexico. *Id.* Mr. Mena's joinder in this suit destroyed diversity jurisdiction.

4. The location and availability of potentially relevant evidence.

The former Egoba employee who drove the long-haul truck involved in the collision is a Mexican citizen and resident, has a Mexican driver's license, and was hired and trained in Mexico. RR 48-49, 66; DX 3. Personnel in Egoba's Queretaro office supervised this employee. RR 48. The truck involved in the

accident was purchased, maintained and repaired by Egoba in Queretaro. RR 52. Records related to both the truck and the driver are located in Queretaro; all are written in Spanish. RR 52, 68.

Other than Mr. Arredondo, witnesses to the collision and related events are all in Mexico and include: the driver involved in the earlier collision that caused the traffic congestion, the former Egoba driver, another Egoba driver present at the collision, other bystanders, police officers who investigated and reported on the collision, an Egoba representative who investigated the collision, medical examiners, doctors who treated Mr. Arredondo, and Egoba's fleet manager. RR 53, 66-68; DX 5. The companies that own the trucks involved in the initial collision that caused the traffic congestion, as well as the drivers of those trucks, are Mexican, as are the Mexican highway patrol officers, and CAPUFE, the entity that owns the toll road. RR 67; DX 16, Exh. C, pp. 3-4.

B. Proceedings below

On January 31, 2005, Respondents sued Egoba for negligence, negligence per se, and gross negligence, seeking substantial actual and punitive damages. CR 10-16. Among other claims, Respondents allege that Egoba failed to "properly train, instruct and supervise its driver." CR 15. In response, Egoba sought to dismiss the case for lack of constitutionally permissible jurisdiction. CR 17-21. The district court signed an order denying Egoba's motion. App. 14-15.

Egoba filed an interlocutory appeal. CR 742-44. The intermediate appellate court in San Antonio, Texas affirmed the district court's decision. App. 1-13. The Texas Supreme Court denied Egoba's petition for review and motion for rehearing. App. 16-17.

REASONS FOR GRANTING THE PETITION

I. The Court should grant certiorari to address (1) important constitutional due process issues defining general personal jurisdiction, about which federal and state courts have disagreed, and (2) significant American foreign policy issues related to private disputes under NAFTA.

Historically, this Court set forth the constitutional standards for personal jurisdiction based on traditional principles of international law and on a principle of strict territoriality. *Pennoyer v. Neff*, 95 U.S. 714, 722 (1877). *Pennoyer* noted that "every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory . . . [and] no State can exercise direct jurisdiction over persons or property without its territory." *Id.* To ameliorate the sometimes harsh effects of a strict territorial approach, the Court adopted a more flexible test providing that American courts may assert jurisdiction over a non-resident only if: (1) the applicable long-arm statute authorizes the exercise of jurisdiction; and (2) that exercise of jurisdiction is consistent with due process because the non-resident

defendant has established "minimum contacts" with the forum state, and the exercise of jurisdiction comports with "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945).

Over the next 40 years, this Court sought to define the boundaries of this more expansive jurisdictional approach, reigning in excessive assertions of personal jurisdiction. *See, e.g., Hanson v. Deckla,* 357 U.S. 235, 251-53 (1958); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 299 (1980); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413-14 (1984); *Asahi Metal Industry Co., Ltd. v. Superior Court of California,* 480 U.S. 102, 113 (1987). The Court has twice addressed the limits that due process imposes on assertions of jurisdiction over a foreign defendant.

In *Helicopteros*, the Court distinguished between specific and general jurisdiction. *Helicopteros*, 466 U.S. at 414-16. In that wrongful death action filed in Texas by U.S. citizens and arising out of a helicopter crash that occurred in Latin America, the Court emphasized that doing business with Texans, buying the helicopter in Texas, and other contacts with Texas did not satisfy the "minimum contacts" part of the analysis necessary to subject a foreign defendant to jurisdiction for an accident in Latin America. *Helicopteros*, 466 U.S. at 418-19. Three years later, this Court overturned a California court's exercise of jurisdiction over a foreign defendant because even if specific personal jurisdiction existed, the exercise of

that jurisdiction did not comport with "traditional notions of fair play and substantial justice." *Asahi*, 480 U.S. at 113, 116. Despite exponential increases in international communications, transactions, and other contacts, *Asahi* was this Court's last statement about the propriety of exercising personal jurisdiction over a foreign defendant in a civil case.

Determining whether the exercise of personal jurisdiction over a particular foreign defendant comports with traditional notions of fair play and substantial justice requires courts to consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. *Asahi,* 480 U.S. at 113. In *Asahi,* the Court specifically cautioned courts to consider other nations' policies and interests and to exercise great care and reserve when extending American ideas of personal jurisdiction to foreign defendants:

> The procedural and substantive interests of other nations in a state court's assertion of jurisdiction over an alien defendant will differ from case to case. In every case, however, those interests, as well as the Federal interest in Government's foreign relations policies, will be best served by a *careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case*, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum state. "*Great care and reserve should be*

> *exercised when extending our notions of personal jurisdiction into the international field.*"

Asahi, 480 U.S. at 115 (citations omitted) (emphasis supplied).

The courts here, however, summarily dismissed any concerns about the effects of their assertion of jurisdiction over Egoba on Mexico's procedural and substantive policies or American foreign policy concerns, despite Egoba's having squarely presented those issues. App. 9-10. Focusing only on the difficulties Egoba would endure to try the case in Texas, the appellate court concluded that "presumably, [Egoba] finds doing business in Texas economically advantageous." App. 10. The Texas courts simply ignored this Court's mandate to consider Mexican policies and American foreign policy interests. Other courts across the country likewise have ignored this Court's *Asahi* mandate. *See, e.g., Reyes v. Marine Mgmt. & Consulting, Ltd.*, 586 So.2d 103, 116-18 (La. 1991) (Hall, J., dissenting) (criticizing majority opinion that did not consider other nations' greater interest in the parties and litigation).

In contrast, several circuit courts and other courts have correctly analyzed the effects of the assertion of extraterritorial judicial jurisdiction on the interests of other nations and American foreign policy interests. *See, e.g., OMI Holdings, Inc. v. Royal Ins. Co of Canada*, 149 F.3d 1086, 1097-98 (10th Cir. 1998) (exercise of jurisdiction over Canadian corporation would negatively affect Canadian policy interests);

Ellicot Mach. Corp. v. John Holland Party Ltd., 995 F.2d 474, 479-80 (4th Cir. 1993) (impact on social policies, including those related to international trade, business, and sovereignty, rendered unreasonable the exercise of jurisdiction over Australian construction company); *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 573, 576 (applying *Asahi* factors to general jurisdiction case and concluding that exercise of jurisdiction over out-of-state defendant was unreasonable); *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201, 209-10, 212 (1st Cir. 1994) (applying *Asahi* factors and concluding that exercise of jurisdiction over out-of-state defendant would be unreasonable); *Paccar Int'l, Inc. v. Commercial Bank of Kuwait, S.A.K.*, 757 F.2d 1058, 1065-66 (9th Cir. 1987) (holding that district court's exercise of personal jurisdiction over Kuwait bank was unreasonable); *Andrews Univ. v. Robert Bell Industries, Ltd.*, 685 F. Supp. 1015, 1025-26 (W.D. Mich. 1988) (in view of Canadian free trade agreement and *Asahi* mandate, exercise of jurisdiction over Canadian company would be unreasonable); *In Re Nazi Era Cases Against German Defendants Litigation,* 320 F. Supp. 2d 204, 234 (D.N.J. 2004), *aff'd*, 153 Fed. Appx. 819 (3rd Cir. 2005) (Germany had substantial policy interests in having restitution claims resolved fairly by its courts).

Courts have also applied inconsistent standards in analyzing general jurisdiction cases. Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. at 829-55. Some courts, like the Federal Circuit,

have indicated that they could benefit from greater guidance about how to determine whether a defendant's activities within a state suffice to confer general jurisdiction. *LSI Industries, Inc. v. Hubbell Lighting, Inc.*, 232 F.3d 1369, 1375 (Fed. Cir. 2000).

Therefore, Egoba asks this Court to grant certiorari because the exercise of judicial jurisdiction over companies from America's trading partners for accidents in foreign countries is likely to recur frequently and, furthermore, is likely to negatively affect the foreign policy interests of the United States, including those manifested in NAFTA, in at least three ways.

First, forcing Mexican businesses to defend themselves in the United States against claims arising from accidents and disputes that occur entirely in Mexico subjects them to a non-tariff trade barrier, sometimes referred to as a "tort tax." DX 12, Ex. D, comments by Donald L. Evans, Secretary of Commerce, at pages 2-3. The cost of defending litigation in the United States far exceeds that in Mexico because of several added expenses, including: translating police reports and other documents including, in this case, the judicial proceedings in Mexico arising from the same accident; securing the issuance of letters rogatory or otherwise attempting to secure the presence of witnesses beyond subpoena power; and retaining experts to present applicable Mexican law to the trial court. These additional litigation expenses function as a tax on Mexican companies like Egoba solely because their businesses facilitate commerce

between the United States and Mexico. Foreign defendants may further be subjected to significantly higher judgments if courts mistakenly apply their law rather than applicable foreign law. Weintraub, 28 U.C. DAVIS L. REV. at 546, 557 (foreign defendants should be protected against damages awards vastly exceeding those available in foreign forum).[8]

United States foreign policy favors refraining from imposing any additional trade restraints on Mexican companies such as Egoba. Among America's foreign policy objectives, as expressed in NAFTA, is the elimination of barriers to international trade and competition between Canada, the United States and Mexico. NAFTA Article 102(1)(a), 32 I.L.M. at 297. According to President Bush:

> Mexico is a friend of America. Mexico is our neighbor. And we want our neighbors to succeed. We want our neighbors to do well. . . . And that's why it's so important for us to tear down barriers and walls that might separate Mexico from the United States. And that's why it's so important for us to stand strong when it comes to free trade with our neighbors to the south. NAFTA has been good for Mexico, ... And let me say one other thing, one other issue that's important . . . the issue of trucking. There are some people who say we shouldn't allow our

[8] In this case, the choice-of-law determination has not yet been made. Respondents have indicated that they plan to argue that Texas law should apply to this dispute.

> friends to the south to send their trucks into the United States. I say that's discrimination against Mexico.

DX 12, Exh. A.[9] Similarly, then-Secretary of Commerce Donald Evans said, "on behalf of the United States government," that Mexico and the United States "share a common destiny" requiring that obstacles be swept aside and that both countries would benefit from "an open, transparent, and expanding trading relationship." DX 12, Exh. C. According to Secretary Evans, concerns about impediments to that relationship include the imposition of "non-tariff barriers to trade." *Id.*

By holding that Egoba's cross-border service subjects Egoba to the jurisdiction of a Texas court for *any and all* lawsuits, including suits arising from accidents or other disputes that occurred *entirely in Mexico*, the court of appeals effectively raised a non-tariff barrier to trade with Mexico. *See* Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 613, 642, 680 (1988) (discussing consequences of general jurisdiction as engulfing employment discrimination claims in other states or product liability claims arising in Germany). Moreover, the Texas court's decision will deter *all* foreign companies from performing cross-border services, hampering rather than promoting international

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[9] Remarks by the President to the Hispanic Chamber of Commerce, August 15, 2001.

trade. Thus, the decision under review compromises the United States' ability to accomplish its foreign policy goals to lower barriers to free trade.

Second, in the NAFTA framework, potential liability under Texas' damages law for torts or other disputes that occurred in Mexico was unforeseeable to Egoba and other similarly situated businesses. No U.S. Department of Transportation regulations or any Mexican legal requirements compel Mexican companies to carry American insurance for claims arising out of events occurring entirely in Mexico. *See* Townsend, *NAFTA, Mexican Trucks, and the Border*, 31 TRANSP. L.J. at 180 n. 397; *see also, Lincoln Gen. Ins. Co.*, 2007 WL 2743166, at *3-5 (insurance policy issued in United States provided coverage only for portion of trip in United States, not portion in Mexico where accident occurred, and federally mandated endorsement did not require coverage for Mexican portion of trip). As required by applicable laws and regulations, Egoba, like other trucking and busing companies (and American companies in the opposite situation), purchases insurance for its trucking operations according to the forum in which the trucks operate. NAFTA does not contemplate that United States courts will exercise general jurisdiction over Mexican trucking companies to adjudicate claims arising out of events that occurred entirely in Mexico, or conversely, the exercise of general jurisdiction by Mexican courts over American trucking companies to adjudicate disputes arising out of events that occurred entirely in the United States. If Mexican and

American businesses could have foreseen this result, in all likelihood they would have made very different business decisions about whether to cross the border at all, and, if so, whether to purchase different or additional insurance coverage. This Court has previously recognized similar business calculations in a domestic case:

> When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State", it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.

World-Wide Volkswagen, 444 U.S. at 297. While Egoba might reasonably have foreseen claims being asserted against it in the United States arising from the drayage operation, it could not reasonably foresee that it would be haled into Texas courts for all disputes regardless of where they occurred or what they entailed.

The exercise of overly broad jurisdiction over citizens of other nations discourages foreigners from engaging in trade with the United States. *See, e.g.*, Gary B. Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 GA. J. INT'L & COMP. L. 1, 29 and 32-33 (1987) (noting that United States courts' exercise of jurisdiction over foreign defendants may trigger commercial retaliation or inappropriately burden foreign commerce), cited approvingly in

Asahi, 480 U.S. at 115; Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. at 900 ("The international relations and comity concerns underlying Asahi are only heightened by applying the American conception of general jurisdiction, which is viewed with abhorrence by many other nations, to disputes without any relationship to the United States."). The United States filed an amicus brief in *Helicopteros* expressing the concern that Texas' expansive general jurisdiction could harm trade relations of American businesses abroad. Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. at 900 n. 452. As Egoba has argued to every Texas court below, joined by amici from two national Mexican chambers of commerce, the Camara Nacional de Autotransporte de Carga ("CANACAR") and Camara Nacional de Pasaje y Turismo ("CANAPAT"), a Texas court's exercise of jurisdiction over Egoba will likely have a chilling effect on trade and the facilitation of commerce between the United States and Mexico.

Third, permitting courts to expansively exercise general jurisdiction to adjudicate disputes arising from events that occur entirely within foreign countries conflicts with international standards and norms, including considerations of comity. *F. Hoffman-La Roche, Ltd.*, 542 U.S. at 164-69 (Court construes ambiguous statutes to avoid unreasonable interference with the sovereign authority of other nations); Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth,* 28 U.C. DAVIS L. REV. AT 555-56. Unlike cases

involving specific jurisdiction, prohibiting the exercise of expansive general jurisdiction promotes comity between the United States and Mexico. Comity is "neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other." *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895). Citing Chief Justice Taney, the Court has noted that comity "contributes so largely to produce justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that courts of justice have continually acted upon it as a part of the voluntary law of nations." *Hilton*, 159 U.S. at 165-66, citing *Bank v. Earle* (1839), 13 Pet. 519, 589. United States courts should "avoid unreasonable interference with the sovereign authority of other nations," recognizing that harmony among nations is needed in today's interdependent world. *F. Hoffman-La Roche, Ltd., S.A.*, 542 U.S. at 164-65. United States courts' assertions of jurisdiction over foreign persons can arouse resentment, provoke diplomatic protests, trigger commercial or judicial retaliation, and threaten friendly relations in unrelated fields. Born, *Reflections on Judicial Jurisdiction in International Cases,* 17 GA. J. INT'L & COMP. L. at 28-30 and 33. The United States expressed this very concern in the amicus brief submitted in *Helicopteros*, arguing that American companies' ability to compete in the global economy could be undermined by subjecting foreign companies to the jurisdiction of U.S. courts simply because they purchase products from Americans.

For more than a century, the United States has rejected Mexican attempts to assert extraterritorial judicial jurisdiction over Americans who have allegedly wronged Mexican citizens in the United States. Joshua Robinson, *United States Practice Penalizing International Terrorists Needlessly Undercuts Its Opposition to the Passive Personality Principle*, 16 B. U. INT'L L. J. 487, 489 (1998) (discussing case in which United States rejected Mexican court's ruling against an American citizen for libelous statements made in Texas). If the United States expects this deference from Mexican courts, then United States courts should exercise a reciprocal restraint. The attempt to exercise jurisdiction over a foreign defendant in this case, based solely on foreign conduct, is precisely the type of "legal imperialism" that this Court has recently cautioned courts to avoid and that runs afoul of comity and other international law norms, provoking undesired consequences for American interests. *Hoffman-La Roche*, 542 U.S. at 169.

In addition to failing to consider American foreign policy interests, the Texas courts failed to consider Mexico's interests, as *Asahi* requires. Mexico's procedural and substantive interests include: exercising its own judicial power to resolve disputes arising from occurrences within its borders, *Vizcarra v. Roldan*, 925 S.W.2d 89, 91 (Tex. App. – El Paso 1996, no writ); *Trailways, Inc. v. Clark*, 794 S.W.2d 479, 486 (Tex. App. – Corpus Christi 1990, writ denied); regulating vehicles operating on its roads within its borders, *Vizcarra*, 925 S.W.2d at 91; *cf. Curley*, 153

F.3d at 15 ("Without question, Mexico has sovereignty jurisdiction over its own airspace"); and "adopting laws restricting tort recovery . . . to protect Mexican businesses and citizens from excessive liability claims." *Id.* at 92; *see also Clark,* 794 S.W.2d at 486. The exercise of personal jurisdiction over Egoba in this case interferes with each of these interests.

In contrast to the Texas courts here, the Fifth Circuit has acted to safeguard those interests in a case arising out of another vehicular accident in Mexico. There, relying on *forum non conveniens*, the Fifth Circuit specifically noted Mexico's sovereign status and the deference due to its governmental choices:

> In making this policy choice [regarding the appropriate remedy for a particular tort cause of action], the Mexican government has resolved a trade-off among the competing objectives and costs of tort law, involving interests of victims, of consumers, of manufacturers, and of various other economic and cultural values. In resolving this trade-off, the Mexican people, through their duly-elected lawmakers, have decided to limit tort damages with respect to a child's death.

Gonzalez v. Chrysler Corp., 301 F.3d 377, 381-82 (5th Cir. 2002), *cert. denied sub nom., Machuca Gonzalez v. Daimler Chrysler Corp.*, 538 U.S. 1012 (2003).[10]

There is substantial disagreement about proper legal standards to apply to trucking within the NAFTA countries' geographic territory. *See, e.g.*, RALPH H. FOLSOM, MICHAEL W. GORDON, & DAVID LOPEZ, NAFTA: A PROBLEM-ORIENTED CASEBOOK 217-48 (2000); Townsend, *NAFTA, Mexican Trucks, and the Border*, 31 TRANSP. L.J. at 146-49, 153-60. Further disruption to generally harmonious relations between the NAFTA signatory countries will result if any one of them can routinely hale citizens of other signatories into its courts to adjudicate claims arising from accidents or disputes occurring entirely in the other signatory country. If this Court should decline review, Mexican courts may infer that the United States has no respect for Mexican courts and Mexican law. Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 GA. J. INT'L & COMP. L. at 15. Businesses on both sides of the border, including the Mexican businesses that are members of CANACAR and CANAPAT, may conclude that they must eliminate contacts with one another that might result in being haled into the courts of the other jurisdiction to defend against claims arising only in their own countries. All of these policy concerns favor this Court's consideration of this petition.

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[10] *See* section III of this petition, addressing the unavailability of the *forum non conveniens* defense here.

II. The Court should grant certiorari because the highest state court to consider this case failed to comply with the constitutional standards set forth in *Asahi* and *Helicopteros*.

If the Texas court had adhered to this Court's *Asahi* mandate, it would almost certainly have refrained from exercising jurisdiction over Egoba. If this Court does not correct this deviation from the *Asahi* mandate, courts will continue to give that mandate lip service only.

The Texas court correctly *recited* the *Asahi* factors, but did not analyze or address the relevant factors in determining whether the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. App. 8-11. Instead, the court acknowledged Egoba's arguments and, using an "ipse dixit" approach to general jurisdiction, dismissed them by saying merely "Egoba freely does business in Texas, and presumably, finds doing so economically advantageous." *Compare* App. 10 with Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. at 829-35. The court recognized that Egoba would bear a heavy burden to defend itself in Texas, but found that Texas could exercise jurisdiction over Egoba primarily because the Texas residents who were driving in Mexico purportedly would be "deprived of a remedy if forced to adjudicate their claims in a foreign jurisdiction." App. 10-11. First, this is an assumption and is incorrect. *Gonzalez*, 301 F.3d at 381-82. Second, the court failed to consider either (1) Mexican procedural

and substantive policies that might be impeded or entirely frustrated if a Texas court exercises jurisdiction over Egoba in this case, or (2) the degree to which the federal government's foreign relations policies will be thwarted by the trial court's exercise of jurisdiction over Egoba.

The Texas court's ruling here also conflicts with *Helicopteros*. In *Helicopteros*, the Court found insufficient contacts to permit the constitutional exercise of jurisdiction, without regard to the additional *Asahi* factors. The defendant in *Helicopteros* had purchased "substantially all of its helicopter fleet in Fort Worth, Texas"; did approximately $4 million worth of business in Fort Worth over six years as purchaser of equipment, parts, and services, spending an average of $50,000 per month with Bell Helicopter, a Texas corporation; negotiated contracts in Houston with a Texas resident to provide the helicopter service faulted in the crash at issue in that dispute; sent pilots to Texas for training (including the one flying the helicopter that crashed) and to pick up helicopters; maintained employees in Texas on a year-round rotation basis; received $5 million under the terms of the contract at issue; and directed a bank in Houston to make payments to an American company for a matter related to the job at issue. *Hall v. Helicopteros Nacionales de Colombia, S.A.*, 638 S.W.2d 870, 871-72 (Tex. 1982), *rev'd by Helicopteros*; *Helicopteros*, 466 U.S. at 423-26 (Brennan, J., dissenting). The Court determined that these Texas contacts were connected to the purchases of helicopters and described the trips

for training by the defendant's personnel as "part of the package of goods and services purchased by Helicol from Bell Helicopter." *Helicopteros*, 466 U.S. at 416-18. Similarly, Egoba's substantially less significant contacts with Texas revolve solely around the drayage business that operates in the limited border commercial zone. Consequently, the Texas courts had even less reason to exercise jurisdiction over Egoba in this case than they did to exercise jurisdiction over the foreign defendant in *Helicopteros*.

III. The Court should grant certiorari to clarify that due process requires consideration of the effect of local laws, such as Texas' prohibition of a *forum non conveniens* defense in cases involving Texas residents.

In *Burger King Corp. v. Rudzewicz*, the Court recognized that a rare defendant could purposefully direct conduct at forum residents, but not reasonably be subject to the jurisdiction of the forum's courts. 471 U.S. 462, 477 (1985). One accommodation that might render the exercise of jurisdiction reasonable in such cases was a change of venue under United States Code section 1404(a), which embodies the common-law doctrine of *forum non conveniens*. *Id.* at 477-78.

Under applicable Texas law, however, a court cannot dismiss a suit by a Texas resident on *forum non conveniens* grounds. *Compare* TEX. CIV. PRAC. & REM. CODE ANN. § 71.051(b) *with* TEX. CIV. PRAC. & REM. CODE ANN. § 71.051(e) ("The court may not stay or

dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state.").[11] Thus, while courts in Texas' sister states – and even Texas federal courts – may avoid the due process questions presented here by dismissing claims on *forum non conveniens* grounds, Texas courts hearing Texas residents' claims must confront the constitutional personal jurisdiction issue because they lack the tool of *forum non conveniens*. *See Dow Chemical Co. v. Castro Alfaro,* 786 S.W.2d 674, 697 (Tex. 1990) (Cook, J., dissenting) (" . . . I fear the decision allows assertions of jurisdiction by Texas courts that are so unfair and unreasonable as to violate the due process clause of the federal constitution.").[12] In this case, the joinder of one Mexican resident as a plaintiff defeated diversity jurisdiction, creating a situation in which Egoba could not assert federal *forum*

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[11] The second sentence of section 71.051(e) subjects this case to the ban: "If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court may not stay or dismiss the action under Subsection (b) if the plaintiffs who are legal residents of this state are properly joined in the action and the action arose out of a single occurrence." TEX. CIV. PRAC. & REM. CODE ANN. § 71.051(e).

[12] Justice Cook predicted that parties would use the jurisdictional analysis to raise issues previously considered when resolving *forum non conveniens* motions. *Castro Alfaro,* 786 S.W.2d at 701 ("No vehicle exists to take account of a defendant's inconvenience. Consequently the common law factors that once comprised the *forum non conveniens* analysis, factors that addressed complaints of inconvenience through a 'means short of finding jurisdiction unreasonable,' must now be raised to the level of a constitutional inquiry and subsumed within the fair play standard of the due process jurisdictional analysis.").

non conveniens principles based on *Piper Aircraft v. Reyno*, 454 U.S. 235, 254-55 (1981) and a similar ruling from the Fifth Circuit involving Mexico, *Gonzalez*, 301 F.3d at 381-82, which would likely have resulted in dismissal of the case to Mexico. This circumstance further compels the need for review and for clarification of the *Asahi* mandate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: October 17, 2007

App. 1

217 S.W.3d 603

Court of Appeals of Texas,
San Antonio.

TRANSPORTADORA EGOBA S.A. DE C.V., Appellant,

v.

Jose Antonio ARREDONDO, Individually and As Personal Representative of the Estate of Miriam Arredondo, Deceased and As Personal Representative of the Estate of Jose Arredondo, Deceased; Edna Arredondo; Martha Arredondo, Individually and As Independent Administrator of the Estate of Juan Arredondo, Deceased, and As Independent Administrator of the Estate of Juana Arredondo, Deceased, and As Personal Representative of the Estate of Selena Arredondo, Deceased, and As Next Friend of Ana Lidia Arredondo, Incompetent; Yesenia Arredondo; Georgina Arredondo; Delia Arredondo; and Albino Mena, Appellees.

No. 04-06-00292-CV.
Oct. 25, 2006.

Karen L. Watkins, Emily Frost, Carlos R. Soltero, Patton G. Lochridge, McGinnis, Lochridge & Kilgore, L.L.P., Austin, Horace C. Hall, III, Hall, Quintanilla & Alarcon, L.C., Laredo, for appellant.

David W. Holman, John M. O'Quinn, O'Quinn, Laminack & Pirtle, Pete Mai, Tammy Tran, The Tammy Tran Law Firm, Houston, for appellees.

Sitting: CATHERINE STONE, Justice, SARAH B. DUNCAN, Justice, SANDEE BRYAN MARION, Justice.

OPINION

Opinion by SANDEE BRYAN MARION, Justice.

This is an appeal from the denial of appellant's special appearance. We affirm.

BACKGROUND

Appellant, Transportadora Egoba S.A. de C.V. ("Egoba"), is a Mexican trucking company with its principal place of business in Queretaro, Mexico. On September 13, 2004, Jose Antonio Arredondo, Miriam Arredondo, Jose Arredondo, Juan Arredondo, Juana Arredondo, and Selena Arredondo left their home in Dimmitt, Texas for a family visit in Mexico. The next day, while in Mexico, the family was in their vehicle, which had come to a stop because of traffic congestion. While stopped, their vehicle was hit from behind by an Egoba truck. The force of the impact sent the Arredondo vehicle into another vehicle. The truck's driver fled the scene. Juan Antonio suffered substantial injuries, and Miriam, Jose, Juan, Juana, and Selena were killed. Appellees filed suit against Egoba in Webb County, Texas. Egoba filed a special appearance, which the trial court denied. This appeal by Egoba ensued.

STANDARD OF REVIEW

A plaintiff bears the initial burden of pleading sufficient allegations to bring a nonresident defendant within the provisions of the Texas long-arm statute. *BMC Software Belgium, N.V. v. Marchand,* 83 S.W.3d 789, 793 (Tex.2002). However, the party contesting jurisdiction has the burden to prove the trial court lacks personal jurisdiction. *American Type Culture Collection, Inc. v. Coleman,* 83 S.W.3d 801, 807 (Tex.2002). On appeal, we review de novo the trial court's determination to grant or deny a special appearance. *Coleman,* 83 S.W.3d at 806; *BMC Software,* 83 S.W.3d at 794. Whether a court has personal jurisdiction over a defendant is a question of law. *Coleman,* 83 S.W.3d at 805-06; *BMC Software,* 83 S.W.3d at 794. However, to resolve the issue of jurisdiction, the trial court must frequently determine questions of fact. *Coleman,* 83 S.W.3d at 806; *BMC Software,* 83 S.W.3d at 794. When, as here, a trial court does not issue findings of fact and conclusions of law with its special appearance ruling, all facts necessary to support the judgment and supported by the evidence are implied. *BMC Software,* 83 S.W.3d at 795. When the appellate record includes the reporter's and clerk's records, these implied findings are not conclusive and may be challenged for legal and factual sufficiency in the appropriate appellate court. *Id.*

PERSONAL JURISDICTION

A Texas court may assert personal jurisdiction over a nonresident defendant only if the requirements of both the United States Constitution and the Texas long-arm statute are satisfied. *CSR, Ltd. v. Link,* 925 S.W.2d 591, 594 (Tex.1996) (orig. proceeding). The Texas long-arm statute allows a Texas court to exercise personal jurisdiction over a nonresident defendant who does business in Texas, and the statute reaches as far as federal and state constitutional guarantees of due process allow. *See* TEX. CIV. PRAC. & REM.CODE ANN. § 17.042 (Vernon 1997); *BMC Software,* 83 S.W.3d at 795; *CSR,* 925 S.W.2d at 594. Therefore, "the requirements of the Texas long-arm statute are satisfied if the exercise of personal jurisdiction comports with federal due process limitations." *Id.* The due process clause permits a state to exert personal jurisdiction over a nonresident defendant only if the defendant has some minimum, purposeful contacts with the state and the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice. *See Dawson-Austin v. Austin,* 968 S.W.2d 319, 326 (Tex.1998).

In analyzing minimum contacts, it is not the number but rather the quality and nature of the nonresident's contacts with the forum state that is important. *See Oryx Capital Int'l, Inc. v. Sage Apt., L.L.C.,* 167 S.W.3d 432, 440 (Tex.App. – San Antonio 2005, no pet.). The exercise of personal jurisdiction is proper when the contacts proximately result from actions of the nonresident defendant that create a

substantial connection with the forum state. *See Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex.1991). However, the constitutional touchstone remains whether the nonresident defendant purposefully established minimum contacts in the forum state. *Id.* at 226-27. This requirement that a defendant purposefully avail itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws, ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person. *Id.* at 226.

Foreseeability is also an important consideration in deciding whether the nonresident has purposefully established minimum contacts with the forum state. *Id.* at 227. The concept of foreseeability is implicit in the requirement that there be a substantial connection between the nonresident defendant and Texas arising from action or conduct of the nonresident defendant purposefully directed toward Texas. *Id.*

General Jurisdiction

The minimum contacts analysis has been refined to two types of jurisdiction – specific and general. The parties agree that specific jurisdiction does not exist here; therefore, we focus on whether the trial court could exert general jurisdiction over Egoba. General jurisdiction exists when the defendant's contacts with

Texas are continuous and systematic, even if the cause of action does not arise from or relate to activities conducted within Texas. *See CSR*, 925 S.W.2d at 595. The general jurisdiction analysis is more demanding than the specific jurisdiction analysis and requires a showing of substantial activity in the forum state. *See id.* "Minimum contacts are particularly important when the defendant is from a different country because of the unique and onerous burden placed on a party called upon to defend a suit in a foreign legal system." *Id.* at 595.

In this case, Egoba asserts its contacts with Texas are too attenuated to support general jurisdiction. We disagree. One of Egoba's directors, Pedro Alegria, lives in Laredo, Texas, and he receives some company mail at his Laredo home. Egoba's website promotes its services in Texas, including that it offers "40 transfer trucks at the cross-border area between Nuevo Laredo and Laredo, Texas for back and forth international freight movements." Egoba's long-haul trucks do not cross over into U.S. territory or haul freight between locations in Texas because Egoba does not have the proper permits to do so. However, Egoba's drayage trucks have the permits to cross into Texas; therefore, if an Egoba customer requests that its freight be picked up or dropped off in Texas, an Egoba drayage truck makes the run. Twenty to thirty Egoba trucks cross the border into Texas daily and drop off or pick up loads at yards in Laredo; traveling approximately 16,000 miles per month in Texas.

In order to cross the border into Texas, Egoba is required to obtain permits from the Texas Department of Transportation and it must have a registered agent in Texas. Alegria testified he is that agent. Alegria also said Egoba has drayage trucks because many U.S. companies do not want to cross into Mexico. In the years between 2002 and 2004, Egoba had interchange agreements with a dozen companies to perform services in Texas on a routine basis.

Egoba has one U.S. bank account at a bank in Laredo, Texas. The Laredo account is for the convenience of Egoba's customers and to buy trucks. Alegria testified Egoba purchased gas in the U.S., but stopped a few years ago when the price of gas rose. Egoba owns an unimproved lot of land in Laredo, Texas on which it parks its trucks. Finally, within the past several years, Egoba has been a party to two lawsuits filed in Texas courts: Egoba was sued in an El Paso, Texas court and sought a change of venue to Webb County; and Egoba itself sued a Mexican customer in another Texas court to collect on a debt.

Any one of Egoba's contacts with Texas standing alone is not determinative of jurisdiction. However, determining the existence of personal jurisdiction does not involve an examination of each of Egoba's contacts with Texas viewed in isolation from one another. *See Holt Oil & Gas Corp. v. Harvey,* 801 F.2d 773, 779 (5th Cir.1986). Rather, we are required to examine Egoba's contacts in toto to determine whether they constitute the kind of continuous and systematic contacts required to satisfy due process.

Id. We conclude Egoba's contacts with Texas, as a whole, are continuous and systematic. *See Summit Mach. Tool Mfg. v. Warren Transp.,* 920 F.Supp. 722, 726 (S.D.Tex.1996) (finding that minimum contacts had been met where defendant motor carrier transported 1,700 loads of cargo in a month to Laredo, Texas; transported 2,000-3,000 shipments to a Texas company; and received shipments, solicited business, negotiated and consummated contracts, and purchased equipment in Texas).

Traditional Notions of Fair Play and Substantial Justice

Even when minimum contacts are established, a Texas court may not exercise jurisdiction over a nonresident defendant unless the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *See CMMC v. Salinas,* 929 S.W.2d 435, 437 (Tex.1996). The Texas Supreme Court has stated that "[i]n this inquiry, it is incumbent upon the defendant to present a compelling case that the presence of some consideration would render jurisdiction unreasonable.'" *Guardian Royal Exch.,* 815 S.W.2d at 231 (quoting *Burger King,* 471 U.S. at 477, 105 S.Ct. 2174).

Thus, a defendant's contacts must be evaluated in light of other factors to determine whether the assertion of personal jurisdiction comports with fair play and substantial justice. *Guardian Royal Exch.,* 815 S.W.2d at 232. These factors include (1) the

burden on the defendant, (2) the interests of the forum state in adjudicating the dispute, and (3) the plaintiff's interest in obtaining convenient and effective relief. *Id.* "When the defendant is a resident of another nation, the court must also consider the procedural and substantive policies of other nations whose interests are affected by the assertion of jurisdiction by a state court." *Id.* at 228. The unique burdens placed upon a foreign defendant who must defend itself in a foreign legal system carries significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders. *Id.* at 229. The procedural and substantive interests of other nations in a state court's assertion of jurisdiction over an alien defendant will differ from case to case. *Id.* "In every case, however, those interests, as well as the Federal Government's interest in its foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State." *Id.* at 228-29.

Here, the accident occurred in Mexico, and did not occur as a result of Egoba's contacts with Texas. All witnesses to the accident are in Mexico, potential third parties who may be liable are in Mexico, all documents are in Spanish, the Egoba truck involved in the accident is impounded in Mexico, and the accident was investigated by Mexican authorities. In

addition, on appeal, Egoba argued extensively that this court must consider the impact of a Texas court's jurisdiction over a foreign company whose business involves the facilitation of commerce between two countries. According to Egoba, "the significance of the drayage industry to the economies of both the United States and Mexico and to the foreign policy of the United States is . . . a crucial consideration in this case."

We do not dispute that the "North American Free Trade Agreement has resulted in a growing commercial interdependence between Texas and Mexico." *Transportacion Especial Autorizada, S.A. de C.V. v. Seguros Comercial America, S.A. de C.V.*, 978 S.W.2d 716, 722 (Tex.App. – Austin 1998, no pet.). Nevertheless, we are unpersuaded by Egoba's contention that forcing it to defend itself in Texas from liability for an incident that occurred in Mexico "would effectively be raising 'non-tariff barriers to trade' . . . [and] imposing a 'tort tax' on Egoba." *See Summit Mach.*, 920 F.Supp. at 726 (noting, as part of its minimum contacts analysis, that "[w]hether or not a part of Texas is legally a free trade zone, it is still a part of Texas."). Egoba freely does business in Texas and, presumably, finds doing so economically advantageous.

We also acknowledge the significant burden upon Egoba to defend itself in a foreign country concerning an incident that will involve proof of Mexican law and evidence that must be gathered in Mexico and presented in a Texas court. However, these burdens are not "unique," and once, as here, minimum contacts

are established, the interest of the forum and the plaintiff often justify even larger burdens on the defendant. *Asahi Metal Indus. Co. v. Superior Court,* 480 U.S. 102, 114, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987). While procuring testimony from Mexican citizens and securing evidence that is in Mexico may pose logistical challenges, those concerns in this case do not render the exercise of personal jurisdiction fundamentally unfair. Egoba's contacts with Texas are extensive, one of its directors lives in Texas, and the company has availed itself of the Texas legal system in the past. These factors combined with Texas's strong interest in ensuring its citizens and residents are not deprived of a remedy if forced to adjudicate their claims in a foreign jurisdiction indicate that exercising personal jurisdiction over Egoba would not pose due process problems. *See Summit Machine,* 920 F.Supp. at 726 (finding the exercise of personal jurisdiction not fundamentally unfair because defendant's offices were located just across the Texas border in Nuevo Laredo, Mexico; it had shareholders who live in Laredo, Texas, and employees who routinely travel into Texas; and it regularly conducted business in Laredo, Texas).

CONCLUSION

We conclude Egoba has minimum, purposeful contacts with the State of Texas and the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice. Therefore, we affirm the trial court's judgment.

Court of Appeals

Fourth Court of Appeals District of Texas

San Antonio

* * * [SEAL] * * *

JUDGMENT

No. 04-06-00292-CV

TRANSPORTADORA EGOBA S.A. DE C.V.,
Appellant

v.

Jose Antonio **ARREDONDO**, Individually and As Personal Representative of the Estate of Miriam Arredondo, Deceased and As Personal Representative of the Estate of Jose Arredondo, Deceased; Edna Arredondo; Martha Arredondo, Individually and As Independent Administrator of the Estate of Juan Arredondo, Deceased, and As Independent Administrator of the Estate of Juana Arredondo, Deceased, and As Personal Representative of the Estate of Selena Arredondo, Deceased, and As Next Friend of Ana Lidia Arredondo, Incompetent; Yesenia Arredondo; Georgina Arredondo; Delia Arredondo; and Albino Mena, Appellees

From the 111th Judicial District Court,
Webb County, Texas
Trial Court No. 2005-CVE-000152-D2
Honorable Raul Vasquez, Judge Presiding

BEFORE JUSTICE STONE, JUSTICE DUNCAN, AND JUSTICE MARION

In accordance with this court's opinion of this date, the judgment of the trial court is AFFIRMED.

It is ORDERED that appellees recover their costs of this appeal from appellant.

Signed October 25, 2006.

/s/ Sandee Bryan Marion
Sandee Bryan Marion, Justice

CAUSE NO. 2005-CVE-000152-D2

JOSE ANTONIO ARREDONDO, Individually & as Personal Representative the Estate of MIRIAM ARREDONDO, Deceased, & as Personal Representative of the Estate of JOSE ARREDONDO, Deceased, and EDNA ARREDONDO, Plaintiffs,	§	IN THE DISTRICT COURT OF
MARTHA ARREDONDO, Individually & as Independent Administrator of the Estate of JUAN ARREDONDO, Deceased, & as Independent Administrator of the Estate of JUANA ARREDONDO, Deceased, & as Personal Representative of the Estate of SELENA ARREDONDO, Deceased, & as Next Friend of ANA LIDIA ARREDONDO, Incompetent, YESENIA ARREDONDO; GEORGINA ARREDONDO; DELIA ARREDONDO and ALBINO MENA, Plaintiffs,	§	OF WEBB COUNTY, TEXAS
VS.	§	
TRANSPORTADORA EGOBA S.A. DE C.V., Defendant.	§	111TH JUDICIAL DISTRICT

ORDER DENYING DEFENDANT TRANSPORTADORA EGOBA'S SPECIAL APPEARANCE

On this the 19th day of April 200[6 /s/ RV], came on to be heard, Defendant Transportadora Egoba's Special Appearance, and the Court, having considered the arguments, finds that Defendant's special appearance is not well-taken and should be denied; and, accordingly, it is:

[SEAL]

ORDERED, ADJUDGED, AND DECREED, that Defendant Transportadora Egoba's Special Appearance is in all things DENIED.

Signed this 19th day of April 200[6 /s/ RV].

/s/ Raul Vasquez
Judge Presiding

APPROVED AS TO FORM:

/s/ Robert E. Ammons
ROBERT E. AMMONS
TBA# 01159820
3700 Montrose Boulevard
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ATTORNEY FOR PLAINTIFFS

[SEAL] OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

RE: Case No. 06-1063 DATE: 6/1/2007
COA #: 04-06-00292-CV
TC#: 2005-CVE-000152-D2

STYLE: TRANSPORTADORA EGOBA, S.A. DE C.V.
v. JOSE ANTONIO ARREDONDO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MIRIAM ARREDONDO, DECEASED, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOSE ARREDONDO, DECEASED, ET AL.

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. The Motion to Dismiss Appeal for Want of Jurisdiction is denied.

(Received Jun. 2, 2006)

MAIL TO: MS. KAREN L. WATKINS
MCGINNIS LOCHRIDGE &
KILGORE L L P
600 CONGRESS AVENUE SUITE 2100
AUSTIN TX 78701

[SEAL]

THE SUPREME COURT OF TEXAS

Orders Pronounced July 20, 2007

ORDERS ON CAUSES

* * *

ORDERS ON MOTIONS FOR REHEARING

THE MOTIONS FOR REHEARING OF THE FOLLOWING PETITIONS FOR REVIEW ARE DENIED:

06-1063 TRANSPORTADORA EGOBA, S.A. DE C.V. v. JOSE ANTONIO ARREDONDO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MIRIAM ARREDONDO, DECEASED, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOSE ARREDONDO, DECEASED, ET AL.; from Webb County; 4th district (04-06-00292-CV, ___ SW3d ___, 10-25-06)

32 I.L.M. 289, *297

Article 102: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:

(a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;

(b) promote conditions of fair competition in the free trade area;

(c) increase substantially investment opportunities in the territories of the Parties;

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.